

Was - Jan. 10, 1989



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Syscon Corporation
File: B-233478
Date: March 7, 1989

DIGEST

1. Under request for proposals for time and materials contract which specifically advises offerors not to propose any direct costs other than material and travel, and provides for payment for services based on fixed-labor rates, government is obligated to reimburse the successful offeror for expenses incurred in relocating its employees only to the extent that such costs are included in its labor rates.

2. Request for proposals (RFP), which estimates that 97 percent of work will be performed at the government site and 3 percent off-site, does not, contrary to protester's argument, permit an offeror to manipulate its level of effort so as to create an unrealistically low offer since the RFP requests only 1 hourly rate per labor category, which means that the successful offeror will be reimbursed at the same rate regardless of whether the work is performed at the government site or off-site.

DECISION

Syscon Corporation protests request for proposals (RFP) No. N00140-88-R-1378, issued by the Department of the Navy for automated data processing (ADP) equipment support services at the Naval Underwater Systems Command in Newport, Rhode Island. Syscon contends that the RFP, as currently structured, improperly precludes potential offerors from identifying in that procurement certain direct costs, such as relocation expenses, which the Navy will be required to reimburse, and improperly fails to permit offerors to breakdown their offers into on-site and off-site work. We deny the protest.

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The RFP contemplates the award of an indefinite delivery, indefinite quantity, time and materials contract to the offeror submitting the lowest-priced, technically acceptable proposal. The solicitation schedule contains estimates of the number of hours of performance required for each of the 18 labor categories for a base year and 2 option years and provides that proposals will be evaluated by multiplying the hourly rate proposed for each category by the estimated number of hours. The solicitation schedule establishes an estimate of \$20,000 as an evaluation factor for material and travel (which it specifically advises is not to include relocation costs), and offerors were instructed not to propose any direct costs. The RFP further provides that the government estimates that 97 percent of the work will be performed at the government site and 3 percent off-site. In this regard, the RFP warns offerors that the agency will not consider an offer which provides different rates in the same category for on-site and off-site work.

Syscon argues that offerors will be able to charge direct costs such as relocation and recruitment expenses against any contract awarded under the solicitation. Thus, the protester concludes that the solicitation is defective as it does not provide that offers should contain a break out of such costs and be evaluated based on those costs. The protester contends that by allowing its competitors to submit proposals that do not reflect the full extent of the costs that the government will actually pay, the Navy has unfairly eliminated a Syscon competitive advantage--its established labor force and on-site location.

The Navy responds that under the solicitation only material and travel costs will be directly reimbursable. The agency notes that it will reimburse the successful offeror for other direct costs, such as relocation, only to the extent that such costs are included in the fixed-labor rates proposed by the offeror.

Syscon responds that the accounting practices of many contractors as well as the Cost Accounting Standards preclude them from charging certain types of costs as anything other than a direct cost to the contract under which the costs are incurred. It apparently is the protester's position that if a contractor is precluded by its own accounting practices from factoring relocation and recruitment expenses into its labor rates, then the government must reimburse the contractor for those costs directly.

We do not agree. It is clear from the express terms of the RFP that payment will be made to the contractor for the services at the fixed-labor rates prescribed in the RFP schedule, which are to include wages, indirect costs, general and administrative expense, and profit. Reimbursement is to be permitted for materials and travel costs only, along with indirect costs properly attributable to those two items. The fact that offerors such as Syscon do not believe that it is consistent with their accounting systems or the Cost Accounting Standards to consider relocation and recruitment expenses as indirect costs for purposes of including them in their fixed-labor rates does not make those costs separately reimbursable under this time and material type contract. The firm can either recover these expenses by including them in its fixed-labor rates or not recover them by failing to include them. We simply do not agree with the protester that expenses such as those resulting from relocation and recruitment are separately reimbursable under a contract awarded under this solicitation. Further, the RFP requirement is not inconsistent with the Cost Accounting Standards as it only informed offerors that they should include their costs other than materials and travel expenses in their labor rates in order to recover them; it does not define how such costs are to be classified for the purpose of the firms' accounting systems. See A & B Industries, Inc., et al., B-226997 et al., June 19, 1987, 87-1 CPD ¶ 616.

The protester's second argument relates to the statement in the RFP that "[f]or proposal purposes, the government estimates that 97 percent of the proposed work will be performed at the government site and 3 percent off-site." Syscon argues that by not specifying the estimated number of hours in each labor category to be performed at the government site as well as the estimated number of hours to be performed off-site, the Navy has created a situation in which an offeror can manipulate the level of effort so as to lower its offer for the purposes of evaluation while charging higher rates during performance.

The Navy points out in response that offerors cannot manipulate their offers in the way the protester suggests because the solicitation requests only 1 hourly rate per labor category, and offerors will be reimbursed at that rate regardless of whether work is performed at the government site or off-site. Further, the agency states the nature of the services to be performed dictates that all of the technical labor hours will be expended on site while only labor hours pertaining to certain secretarial and administrative personnel will be expended off-site.

Syscon responds that manipulation of the level of effort is possible even though the solicitation requests only one rate per labor category since offerors are also required to submit a cost breakdown of their hourly rates. The protester argues that the cost breakdown will serve to notify the contracting officer of the percentage of the total hours for each labor category that the offeror proposes to perform at the government site and the percentage that it proposes to perform off-site. According to the protester, by accepting the offer, the agency is bound by the offeror's mix of government site/off-site hours for each labor category set forth in the cost breakdown.

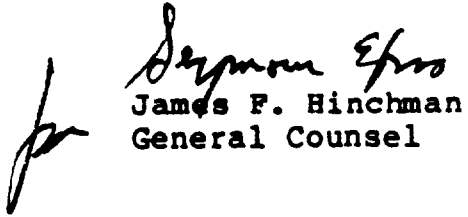
Syscon cites no support for its argument that the agency, by accepting an offer, is bound by any assumptions made by the offeror in calculating its labor rates, and we are aware of none. By accepting an offer under this RFP, the government agrees to pay the offeror at the fixed-hourly rates set forth in its offer, and not at any differing rates that may be set forth in its cost breakdown. Beyond this point, the protester has not made clear its position that the RFP format lends itself to manipulation as to the off and on-site work. We are aware that the 97 percent to 3 percent work mix stated in the solicitation is an estimate and that this ratio may vary under the actual work orders; nevertheless, we simply do not understand the basis of Syscon's argument that under the RFP's single rate schedule this scheme will be especially susceptible to unbalanced offers.

The protester points out finally that in other solicitations for time and materials type contracts, the Navy has an occasion indicated that it will reimburse the successful offeror for relocation expenses and broken down by labor category the number of hours to be performed at the government site and off-site. Syscon argues that because the Navy has included such provision in other solicitations, it should include them here.

We do not think the fact that the agency saw fit to include these provisions in other solicitations has any bearing on whether or not their inclusion is required here. It is up to the agency to determine with regard to each procurement the contract format that will best meet its needs, see Emerson-Sack-Warner Corp., B-206123, Nov. 30, 1982, 82-2 CPD ¶ 488, and the fact that it perceived a need for a particular format in another instance involving different circumstances does not mean that such a format is required here. The agency explains, for example, that it permitted reimbursement for relocation expenses in the other time and materials contract cited by the protester because the agency

believed that it was needed to foster competition because there were an inadequate number of local firms with the requisite expertise.

The protest is denied.


James F. Hinchman
General Counsel